

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

BRIAN C. MORGAN,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-30454

JAMES RUBENSTEIN, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court are Plaintiff's Motion to Amend Complaint/Named Defendants, (ECF 32), Plaintiff's Motion for Leave to Amend Complaint to Address New Defendant, (ECF 34), documents that are construed as Plaintiff's Letter-Form Motion to Amend Complaint, (ECF 36),¹ Plaintiff's State a Claim Attempt, (ECF 37), Plaintiff's Motion to Amend Details, (ECF 38), documents that are construed as additional detail in support of Plaintiff's Amended Complaint, (ECF 39 & 42), documents that are construed as additional detail in support of Plaintiff's Amended Complaint and Plaintiff's request for a status hearing, (ECF 41), and Plaintiff's Motion for Status Hearing, (ECF 44).

Prior to these filings, by Standing Order entered on April 8, 2013 and filed in this case on December 2, 2013, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of proposed findings of fact and recommendation for disposition ("PF&R"). (ECF

¹ "A document filed *pro se* is 'to be liberally construed'" *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

6.) Magistrate Judge Tinsley filed his PF&R on August 5, 2014, which recommends that this Court dismiss Plaintiff's Amended Complaint, (ECF 23), and this civil action pursuant to 28 U.S.C. § 1915A, deny as moot Plaintiff's Application to Proceed Without Prepayment of Fees and Costs, (ECF 1), and waive the applicable filing fee. (ECF 30.) Plaintiff filed a general objection to the PF&R on August 21, 2014, (ECF 31), and additional details to the objection on September 15, 2014, (ECF 34.)

Federal Rule of Civil Procedure 15 permits amendment of a complaint "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.* Under Rule 15(a), "leave to amend should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or amendment would be futile." *Matrix Capital Mgmt. Fund, LP v. BearingPoint, Inc.*, 576 F.3d 172, 193 (4th Cir. 2009) (citing *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006)). This liberal amendment approach "gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities." *Id.* (internal quotation marks and citation omitted).

Plaintiff's amendment of the operative complaint would not be prejudicial to the opposing parties, there is no indication in the record that Plaintiff has acted in bad faith, and the Court is not aware of any evidence indicating the amendment would be futile. Accordingly, the Court **GRANTS** Plaintiff's Motion to Amend Complaint. (ECF 32.) The Court **ORDERS** Plaintiff to file an amended complaint no later than April 13, 2015, or Plaintiff's previous filings related to the Motion to Amend Complaint, (ECF 34, 36, 37, 38, 39, 41, & 42), shall together constitute Plaintiff's second amended complaint.

The Court cautions Plaintiff that future motions to amend the operative complaint may not be granted by the Court if they do not satisfy the above standard. Similarly, the Court cautions Plaintiff that future non-motion documents providing additional detail may not be considered by the Court, depending on the application of the appropriate legal standards.


For reasons appearing to the Court, Plaintiff's request for a status hearing, (ECF 41), and Plaintiff's Motion for Status Hearing, (ECF 44), are **DENIED**.

For the reasons discussed above, the Court **DECLINES TO ADOPT** the PF&R. (ECF 30.) It is further **ORDERED** that this matter is re-referred to Magistrate Judge Tinsley for further proceedings after April 13, 2015.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 12, 2015



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE